

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR.

O R D E R

Smt. Mamta & Ors. v. Civil Judge (JD)-cum-JM  
No.2, Jodhpur & Ors.

S.B.CIVIL WRIT PETITION NO.78/2004  
under Articles 226 and 227 of the  
Constitution of India.

Date of Order : 9<sup>th</sup> January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioners.  
Mr. B.L.Tiwari, Dy.Govt.Advocate.  
Mr. M.K.Trivedi]  
Mr. S.N.Trivedi] for the respondents.

BY THE COURT :

With most unfortunate instance in background,  
the instant petition for writ is preferred by the  
petitioners claiming reliefs mentioned hereunder:-

I.by an appropriate writ, order or  
direction, the judgment and decree  
dtd.18.08.2001 (Annex.5) be declared nullity.

II.by an appropriate writ, order or  
direction, the respondents may be directed  
to restore possession of the petitioners  
over house situated at Prajapat Colony,  
Ummad Palace Road, Raikabagh, Jodhpur  
forthwith.

III. by an appropriate writ, order or direction, proper compensation be awarded to the petitioners for illegal act of respondents No.3 and 4 and further criminal contempt proceedings may be ordered to be initiated against respondents no.3 and 4 for abusing the process of Court.”

The petitioner No.1 is wife of respondent No.3 Shri Harikishan and the petitioners No.2 to 4 are their daughters. It is alleged in the petition that the respondent No.3 from beginning was not caring to his wife and children and was adopting cruel tactics against them. The respondent No.3 married to the petitioner No.1 on 6.12.1976 but according to the petitioners, he used to beat his wife under the influence of intoxication and many a time turned her out from their house. In the year 1980 the petitioner No.1 was turned out from the house of respondent No.3, after severe beating, however, because of intervention of reputed persons of the society in the year 1981 the petitioner No.1 again started living with respondent No.3. In the year 1987 again, according to the petitioners, the respondent No.3 evicted the petitioner No.1 and their two daughters from his house. At that time the petitioner No.1 was said to be pregnant. In the year 1988 the petitioner No.4 was born and after intervention of parents of the petitioner No.1 and other reputed persons of the community the petitioners

were taken by the respondent No.3 to his house in the year 1989. It is alleged that though the petitioners started living with the respondent No.3 but he was never behaving humanly with them and use to beat, harass and humiliate the petitioner No.1 which the petitioner No.1 had to bear mainly for the purpose of welfare of her daughters. It is also averred in the petition that in the year 1998 the respondent No.3 shifted the petitioners in his ancestral house situated at Prajapat Colony, Ummed Palace Road, Raikabagh, Jodhpur and since September, 1998 he did not take care of the petitioners in any manner. In these circumstances the petitioners left with no option but to prefer an application under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 before the Family Court, Jodhpur.

The respondent No.3 in order to exert influence on the petitioner No.1 not to pursue the application before the Family Court came to the house of then petitioners on 20.12.2003 alongwith police personnel and court officer. At that time none of the petitioners were at house and the premises was locked. It is further alleged that the lock was broken in absence of the petitioners, goods of the petitioners including apparatus used by the petitioner No.2 for running her Beauty Parlour and other household articles were taken out from the house and were being loaded in a truck. On inquiry it was found that there was an

order of the competent civil court for eviction from the house. According to the petitioner they ultimately came to know that a suit bearing No.360/98 came to be filed by brother of respondent No.3 Dr.Dev Kishan Soni (respondent No.4) claiming himself to be owner and landlord of the premises and the house having been claimed to be given to the respondent No.3 on rent. The respondent No.4 filed a suit for eviction of rented premises and recovery of rent due which was accepted by the court of Civil Judge (JD) by the judgment and decree dated 18.8.2001 with a direction for eviction from the premises and for recovery of rent due in a tune of Rs.29,700/-.

The allegation of the petitioners is that the respondents No.3 and 4, who are real brothers, obtained a collusive decree solely with a view to evict the petitioner from the premises and for this purpose the court machinery was abused which is also a case of cruelty as defined in Section 498-A IPC. It is stated that the process of court has been abused by the respondents No.3 and 4 by making wrong statements to the extent to make to believe the court that the respondent No.3 is the tenant and further make to believe that the possession over the property in dispute was of the respondent No.3. The respondent No.3, according to the petitioners, intentionally did not contest the suit effectively and, therefore, he did not cross examine the sole witness i.e. the plaintiff

(respondent No.4) nor produce any evidence. The application preferred by the respondent No.4 as plaintiff in the suit referred above under Section 13 (5) of the Rajasthan Rent Control Act was also accepted with consent resulting into striking out of defence. The entire ploy was adopted by the respondents No.3 and 4 only to somehow evict the petitioners.

On basis of above allegations the petitioners in present writ petition sought a writ to declare the judgment and decree passed by the Civil Court on 18.8.2001 null and void. The petitioners in the writ petition itself have stated that extra ordinary circumstances existing in present case left them with no option but to approach this Court under Article 226 of the Constitution of India instead of availing remedy provided under the provisions of Code of Civil Procedure/Rajasthan Rent Control Act.

A reply to the writ petition is filed on behalf of the respondent No.3 denying all the allegations with regard to ill-treatment with the petitioners, cruelty towards the petitioner No.1 and with regard to obtaining collusive decree for eviction from the rented premises.

The respondent No.3 also raised preliminary objection with regard to maintainability of the writ petition on various counts including that the

appropriate remedy available to the petitioner to challenge the judgment and decree dated 18.8.2001 is before the civil court.

It is stated in reply to the writ petition that the property in question is not ancestral property but is exclusively belonging to the respondent No.4 and the respondent No.4 rented it to the respondent No.3. The petitioners being wife and children of the respondent No.3 were residing in the aforesaid premises. The suit was filed by the respondent No.4 for eviction of the respondent No.3 from the rented premises. A written statement was filed and the suit was contested. The respondent No.3 while denying the fact that collusive decree was obtained to exert influence upon the petitioner not to pursue the application preferred by her before the Family Court, Jodhpur, stated that in written statement to the plaintiff the outcome of which is the judgment and decree dated 18.8.2001 he denied the plaintiff's allegations and contested suit effectively. The suit was decreed by the civil court by judgment dated 18.8.2001 and the rent was determined by the court in the month of April, 2000 in a tune of Rs.52,000/-. It was not possible for him to pay such huge arrears of rent, therefore, his defence against the eviction was struck out. It is also stated in reply to the writ petition that the respondent No.3 being tenant was only the necessary party as defined in the suit concerned and the petitioners being the family

members of the respondent No.3 were not at all required to be added as the defendants.

A reply to the writ petition has also been filed on behalf of the Superintendent of Police, Jodhpur stating therein that the aid of police was provided for getting the premises evicted as by an order dated 17.12.2003 a direction was given by the civil court to Station House Officer of Police Station Udaimandir to provide police force with lady police constables on 20.12.2003 for making proper execution of the judgment and decree dated 18.8.2001 passed by the Civil Judge (JD), Jodhpur.

It is the position admitted between the parties that the premises wherefrom the petitioners were evicted has already been demolished and, therefore, in any event the petitioners cannot be restored with the possession of the said premises. The counsel for the petitioners, therefore, has pressed for prayer No.3 only i.e. with regard to award of compensation and to initiate criminal contempt proceedings against the respondents No.3 and 4.

Heard counsel for the parties.

Counsel for the respondents, at the first instance, raised a preliminary objection with regard to maintainability of the writ petition on the count that

the petitioners could have moved to civil court for setting aside the judgment and decree dated 18.8.2001. It is also urged by counsel for the respondents that the entire petition is full of disputed questions of fact which cannot be settled under extraordinary jurisdiction vested with this Court.

Counsel for the petitioners, on the other hand, states that the circumstances prevailing in present case amply prove that the respondents No.3 and 4 by collusion played a fraud with the Court and by abusing process of the court obtained the decree for eviction.

Counsel for the petitioners cited number of judgments of Hon'ble Supreme Court to the effect that a writ can be issued even to a private person and while exercising powers under Article 226 of the Constitution of India directions can also be given to private persons to pay compensation to the person aggrieved.

However, I am of the opinion that the question with regard to grant of compensation or any other direction will come into picture only after reaching at the conclusion that in present set of facts and circumstances whether this Court can declare the judgment and decree dated 18.8.2001 null and void. The petitioners have placed on record certain facts and also tried to make a chain of circumstances to prove

that the respondents No.3 and 4 being real brothers played fraud and abused the process of court by way of filing a civil suit for eviction from rented premises and for recovery of the rent. A collusive decree was obtained by them which ultimately effected the petitioners adversely.

The facts averred in the writ petition by the petitioners are empathetically denied by the respondent No.3. All the facts averred in the writ petition are required to be proved by evidence. The circumstance narrated in the petition does not prove the allegations conclusively. A judgment and decree passed by the civil court, therefore, in present set of facts and circumstances of the case cannot be declared null and void. I am of the considered opinion that appropriate course before the petitioners was to file a civil suit to get the judgment and decree dated 18.8.2001 set aside. The remedy availed by the petitioners under Article 226 of the Constitution of India, in my considered opinion in present set of circumstances, is not competent. In view of the fact that I am of the opinion that the remedy under Article 226 of the Constitution of India is not available to the petitioners in the instant cause, therefore, I am also not entering into the questions as to whether a prerogative writ can be issued to a private person, if can be issued then in what circumstances. I am also, for the same reason, not inclined to deal with the

issue with regard to grant of compensation to the petitioners, as such I am not referring the judgments cited by the counsel for the parties on these issues.

Accordingly the writ petition is dismissed with no order as to costs.

( GOVIND MATHUR ),J.

kkm/ps .